

?????????? ????????

?????? ??? ?????????? (???? ???)

??? 24?? ??????? 2022 (*)

«????????????? ?????????? – ?????????? – ????? ?????????????? ????? (???) – ??????
2006/112/?? – ????? 9 – ?????????????? ??? ????? – ????? 295 ??? 296 – ???' ??????
????????? ??? ?????? – ??????? ??? ?????? ?????????? ?????????????? ??????????????????
????? ??? ?????????? ????? ?????????? ????? – ?????????? ??? ?????? ?????? ?????? ??
????????? ?? ?????????? ?????????? ??? – ??????? ??? ?? ???? ?????? ??
????????? ??? ??? ?????????? ??? ?????? ???' ?????????? ?????????????? ??? ?? ???? ?????? ??
?? ?????????????? ??? ??? ?? ?????????? ?????????? ??? – ??????? ??? ??? ?????? ?????? ???
????????? ??? ?????? ??? ???' ?????????? ??????????»

???? ??????? C?697/20,

?? ??????????? ?????? ?????????????? ?????????? ??????? ??? ?????? 267 ????, ???
?????? ?? Naczelnego S?d Administracyjny (?????? ?????????? ???????????, ???????) ??
?????? ?? 22?? ?????? 2020, ? ????? ?????? ??? ?????????? ??? 21 ??????????
2020, ??? ?????? ??? ???

W.G.

????

Dyrektor Izby Skarbowej w L.,

?? ?????????? (???? ???),

????????? ??? ??? I. Ziemele, ??????? ????????, T. von Danwitz ??? A. Kumin (?????????),
???????,

?????? ??????????: ?. ????????

?????????: A. Calot Escobar

?????? ??? ?????? ?????????? ??????????,

????????? ??? ?????? ??? ?????????? ??? ????????:

- ? W.G., ?????????????? ??? ??? T. Mi?ek, doradca podatkowy,
- ? Dyrektor Izby Skarbowej w L., ?????????????? ??? ??? M. Ko?aci?ski,
- ? ??????? ????????, ?????????????? ??? ??? B. Majczyna,
- ? ??????? ????????, ?????????????? ??? ??? L. Lozano Palacios ??? M.
Siekierzy?ska,

????????? ??? ?????????? ??? ??????, ??? ?????? ??? ?????? ????????????, ?? ?????????? ???
????????? ??? ????? ?????????? ??????????,

????????? ??? ??????????

?????????

1 ? ??????? ?????????????? ?????????? ?????? ??? ???????? ??? ?????? 9, 295 ??? 296
??? ??????? 2006/112/?? ??? ????????????, ??? 28?? ?????????? 2006, ??????? ?? ?? ??????
?????? ????? ?????????????? ?????? (?? 2006, L 347, ?. 1, ??? ????: ?????? ???).

2 ? ??????? ??? ?????????? ??? ??????? ?????????? ??????? ??? W.G. ??? ???
Dyrektor Izby Skarbowej w L. (????????? ??? ?????????? ?????? ??? L., ??????) ??????? ??
??? ??? ?????????????? ?????? (???) ??? ?????????? ?????? ??? ?????? 2011.

? ? ?????? ????????

? ? ?????? ??? ???????

3 ?? ?????? 9, ?????????? 1, ????????, ??? ??????? ??? ?????????? ?? ?????:
«?????? ?? “????????????? ????” ?????????????? ????, ??? ?????? ?????????? ??? ??
????????????? ????, ?????????? ?????????????? ????, ?????????? ??? ?? ??? ?????????? ????
??? ?? ?????????????? ??? ?????????????? ????.

? “????????? ??????????????” ?????????? ??? ?????????????? ??? ??????????, ??
?????? ? ??? ?????????? ??????????, ?????????????? ??? ?? ??? ??????????????
?????????, ??? ?????????? ?????????????? ????, ??? ??? ?????????????? ??? ??????????
?????????????. ?? ?????????? ?????????????? ????, ???, ? ??????????????
????????? ? ????, ?? ?????? ????, ?? ?????? ??? ?????? ?????? ?????? ?????????? ????.»

4 ? ?????? XII ??? ?????? ????, ??????? ?? ?? «????? ??????», ???????, ??????
?????, ?? ??????? 2, ?? ????? «????? ???' ?????? ?????? ??????», ?? ????
????????????? ?? ?????? 295 ??? 305 ??? ?? ??? ??????.

5 ?? ?????? 295, ?????????? 1, ??? ?????? ??? ?????????? ?? ?????:

«?? ?? ?????? ??? ?????? ??? ?????? ???:

1) “??????”, ? ?????????? ????, ? ?????? ?????? ?? ?????????????? ??? ??
?????? ???????, ?????????? ? ?????????? ??? ?????????? ????,

2) “??????, ?????????? ? ?????????? ??????????”, ?? ??????????????, ?? ??????
????????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????????? ??? ?????????? ??? ?????????? V??,

3) “?????? ??? ???' ?????? ??????????”, ? ???????, ??? ??? ?????? ?????????? ??
???' ??????? ?????? ??? ?????????? ??? ?????? ???????,

[...]».

6 ?? ?????? 296, ?????????? 1 ??? 2, ??? ?????? ?????? ?????? ?????????? ?? ?????:

«1. ?? ?????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

????????? ??????? ??, ????????????, ??? ?????? ??????? ?? ???? ?????????? ??
????????? 1 ?? ??????????? ?? ??????????, ??? ???' ?????? ???????, ?? ?????? ??????????
??? ?????????? ??? ??????????? ?? ???, ? ?????? ?????????? ??? ??? ?????? ??????
??? ?????????? ??? ?????? ???' ?????? ?????????, ??????? ?? ??? ?????????? ???
????????? ???????.

2. ??? ?????? ?????? ?????? ?? ??????? ?? ???' ?????? ??????? ??????????
????????? ?????? ??? ?????? ???????, ??? ??? ?????? ?????? ? ?????????? ??? ??????????
????????? ??? ??? ?, ???????????, ??? ?????????? ?????? ??? ?????????? ???
????? 281 ??? ?????????? ?????????? ?????????? ??????»

?? ??????? ??????

7. ??? ?? ??? 15 ??? ustawa o podatku od towarów i usług (????? ??? ?? ??? ?????? ???
??? ?????? ??? ??? ??????), ??? 11?? ?????? 2004 (Dz. U. 2004, ????. 54, ??? 535),
????? ??? ?? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? (??? ????:
????? ??? ?? ???):

«1. ??? ?????????? ??? ?????? ?? ??????? ?? ???????, ?? ?????????? ?????? ???
????? ?????????? ??? ?? ?????? ??????? ?? ?????? ?????? ??? ?????? ?????? ??????????
????????? ?????????? ??? ?? ?????? ??? ??????? ?? ?????????? 2, ?????????? ??? ??????
??? ?????????? ??? ?????????? ???.

[...]

4. ??? ?????????? ??? ?????? ?? ??????? ?? ?????????? ?????????? ??????????
?????????, ?????????? ? ?????????? ?????????? ??????????, ?????? ?????????? ??? ??????
????? ?????????? ?????? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? 96,
????????? 1.

5. ? ?????????? 4 ?????????? mutatis mutandis ??? ?????? ??????? ?? ??? ??????
????????????? ?????? ?????????? ??? ?????????? ?????? ??? ?????????? ?????????? ??? ???
????????????? ??? ?? ??? ??????????.

[...]»

8. ??? ?? ??? 43, ?????????? 1, ??? ?????? ????:

«??? ??? ??? ???????????:

[...]

3) ? ?????????? ?????????? ?????????? ??? ?????? ?????????? ?????? ??? ???' ??????????
????????? ??? ?? ??? ??? ?????? ?????????? ?????? ??? ? ?????? ?????????? ??????????
??? ?????? ??? ???' ?????? ??????????

[...]».

9. ?? ??? 96 ??? ?? ??? ?????? ?????????? ?? ????:

«1. ??? ?????? ??? ?????????????? ??? ??? 15 ?????????????? ??? ??? ??? ???
????????????? ??? ??? ?????? ?????? ??? ?????? 5 ??? ?????????? ?????? ?????? ???
????????? ??? ?????? ?????? ??? ?????????????? ??? ?????????????? ???, ??? ??? ??????????
??? ??? 3.

2. ??? ?????????? ??? ?????? ?????? ??? ?????????? ??? ?????????????? ??? ??? 15, ?????????? 4
??? 5, ? ??? ?????? ?????????? ??? ?????????? ?????? ?????? ?????????? ??? ?????????? ??? ??? ??
??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ?????? ?????? ??? ??? ?????? ???
????????? ??? ?? ?????? ??? ?????????? ?????? ??? ?????? ??? ?????? ?????? ???

[...]»

? ?????? ??? ?????? ?????? ??? ?? ?????????? ??????

10 ??? 31 ?????????? 2010 ? W.G., ? ??? ?????? ??????????????, ?? ??? ??? ??? ??? ???
????????? ?????????? ?????????????? ??? ?????? ??? ?????? ?? ??? ?????? ???, ??????
????????? ?????????? ??? ???????, ??????? ??? ??? ??? 96 ??? ?????? ??? ??? ???
????????? ?????????? ??? ?????? ???, ?????????????? ???' ?????? ??? ?????? ??? ??? ???
????????? ??? ???' ?????????? ?????????? ??? ?????? ??? ?????? ????. ??????????, ? ??????
??? W.G., ? ?????? ?????? ??????????????, ?????? ?????????? ?????? ?????????? ???
????????????? ????, ?????? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ???
????????? ??? ???' ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ???.

11 ??? 29 ?????????? 2016 ? W.G. ?????? ?????????? ?????????? ???, ?????????? ??
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??????????,
??????, ??????, ???????, ??????? ??? ?????? 2011.

12 ?? ?????? ??? 26?? ?????????? 2016, ? ?????? ?????? ?????????? ??? ?????????? ???
????????? ??? ?????? ????. ? ?????????? ??? ?????? ?????? ?????????????? ?? ?????? ???
????????? ?????????? ??? ?????????? ??? L., ??? 28?? ?????????? 2017. ?? ?? ???
??? ?????? ???, ?????? ? W.G. ??? ?????? ?? ?????? ?????????? ??? ?????????? ???
??? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ??? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????????? ???
????????? ?????????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????????? ???
????????? ??? W.G. ?????? ??? ?????? ?????? ??? ?????? ??? ?????????? ???
????????????? ??? ?????? ??? ?????? ???, ? ??????, ?? ?? ??????, ?????? ??? ?????? ???
??? ?????? ??? ???' ?????? ??? ?????? ???.

13 ? ?????? ??? ?????? ? W.G. ??? ??? ?????????? ??? ?????? ?????????? ???
Wojewódzki S?d Administracyjny w L. (????????? ?????????? ??? ?????????? ??? L.,
?????) ?????????? ?? ?????? ??? 17?? ?????????? 2017. ??????????, ?? ??????????
??? ?????? ???, ???, ??? ?????? ??? ?????? ?????? ?????????? ?????????? ???
????????? ??? ?? ?? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ???
????????? ??? ?????? ???, ??? ?????? ?? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????????? ??? ?????? ???, ?? ?????? ???, ?? ?????????? ?, ? W.G. ??? ? ?????? ???
????????????? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
????? ?????? ???.

14 ? W.G. ?????? ?????? ??? Naczelnego S?d Administracyjnego (?????????
????????? ??????????, ??????), ??? ??? ?????? ?????????? ???.

15 ?? ?????????? ??? ?????? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ??, ??? ??????

??? ?????? ?????????? ?????????????? ???????, ? ??? ???? ???? ?????? ??? ?????? ??
?? ?????????????? ??????? ?? ???? ?????? ??????? ?? ???? ???? ???? ???? ?????????? ??
?? ???' ?????????? ??????? ?? ???? ?????? ?? ???? ???? ???? ???? ????' ??????????
????????? ??????? ??' ?????? ?????????????? ?? ???? ???? ????.

16 ??? ???? ?? ???? ??????????, ??? ?? ???? 15, ?????????? 1 ??? 2, ??? ???? ???? ??
????? ??? ?? ???? 9 ??? ?????? ??? ?????????? ??? ???? ?????????? ??? ?????? ??????????
?? «????????? ??? ????» ?????????? ??? ???? ?????? ??? ?????? ?????? ??????????
????????????? ??? ???? ?????? ??????????. ???????, ?? ?????????? ?????, ??????????????
?????????, ??? ?????????? ?? ?????????????? ??? ?????????? ?????, ??????????????
????????? ??? ???? ??? ?????? ?????????? ??????????????, ????? ???? ?? ???? ??
????????????? ??? ???? ?????? ??????????.

17 ??????????, ?? ?????? ?????????? ?????????????? ???, ??? ?????????? ??? ??????????
????????? ??? ?????? 15, ?????????? 4 ??? 5, ??? ?????? ???, ?? ?????? 96 ??? ??????
????? ?????????? ??? ???? ?????? ?????????? ??? ?????????? ?????? ?????? ?? ??????????
????????????? ??? ??? ?? ??? ?????? ??? ?????? ??? ?????? ?? ?????????? ?????????? ???
??? ?????? ?????? ??? ?????????? ??? ?? ?????? ?? ?????? ?????????? ?????? ??? ??????
????????? ?????????? ? ??? ?????? ??????????. ??? ?????????????? ??? ??? ??????
?????????, ??? ??? ?????????? ??? ?????? ?????????? ??? ?????? ?? ?????? ??? ?????????? ??
????? ?????????? ??? ?????????? ??? ?????? ?????? ?? ??? ?????? ??? ?????????? ??? ??????????
????? ??? ??? ???, ??? ??????????, ??? ?????????? ? ?????????? ??? ?????????? ??? ??????????
????? ??? ??? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???

18 ?? ? ???? ?????????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ???? ??????????
????? ?? ?????? ?????? ??????????, ?? ?????? ??? ?????? ?? ?????????? ?? ??????????????
????????? ?????????? ??? ?????? ?????????? ?????????????? ?????? ?????? ?? ??????????
????? ?????? ?????? ??? ?????? ?????????? ?????????? ?????????? ??? ?????? ?????????? ???
????????? ?????????? ?? ?????? ?????????? ??? ??????, ??? ?????? ?? ?????????? ??? ??????
????????? ?? ???' ?????????? ?????????? ??? ??????, ??? ?????? ? ?????????? ??? ?????? ???
????????? ?????? ?????????? ??? ?????? ??????.

19 ?? ? ???? ?????????? ?????????? ??? ?????? ?? ???? ???? ?????? ??? ?????? ?? ??????
??? ? W.G. ??? ? ?????? ??? ?????? ?????????? ?????????????? ?????????????? ??? ???
????????? ??? ??? ?????????? ?????? ?????? ??? ??? ?????????????? ?????????? ??? ???
????? ??? ?????????? ??? ?? ?????? ?????????. ???' ?????? ??? ?????, ?? ??????
????????? ??? ??????????, ?????????????? ??? ?????????? ??? ?????????? ??????, ??????????
??? ??? ?????? ?????? ?????????? ??? ?????????? ??? ?????????? ??????.

20 ??????, ?? ? ???? , ?????????? ?? ??? ???? ?? ?????? ?? ? ???? ?????? ??? ?????? 15,
????????? 4 ??? 5, ??? ?????? ??? ?????? ?????? ?? ???? ???? ???, ?? Naczelnny S?d
Administracyjny (????????? ?????????? ??????????) ?????????? ?? ?????????? ??? ??????
??? ?????????? ??? ???? ?????? ??? ?????????? ?? ?????????? ?????????? ?????? ??????:

«1) ?????????? ?? ?????????? ??? ?????? [??], ??? ?????????? ?? ???? ???? 9, 295
??? 296, ?? ?????? ?????? ??? ?????? ?? ???? ???? 15, ?????????? 4 ??? 5, ??? [????? ????
??], ??? ??? ?????? ?????????? ? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??????
????????????? ??? ?????? ??? ?????? ?????????? ?????????? ?? ?????????? ?????? ??????
????????? ??? ??? ?????? ??? ?????????? ?????????? ?????????? ?????? ?????? ??????
?????????;

2) ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ?????? ?? ???
????? ??????, ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

??? ??????? ??? ???????? ??????????? ??? ??? ?????? ??? ??? ?????? ??? ?????? ??? ??????? ???
?????? ??? ???' ??????? ??? ???????;

3) ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?????? ??????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ??????????;»

??? ??? ?????????? ??? ????????

21 ??? ?? ???? ??????? ???, ?? ?????? ??????? ?? ?????????? ??? ??????, ?? ??????
?????????? ???, ???' ??????, ?? ?????????? ?? ? ???? 9, 295 ??? 296 ??? ??????
??? ?????? ??? ?????? ??? ?????????? ??? ?????? ?????? ?????? ? ?????? ?????????? ??
????????? ??? ?????? ??? ?????? ?????? ?????????? ?????????? ??? ?????? ??? ??????
????????????, ?????????????? ?????? ??? ?????? ?????? ?????? ?????? ?????????? ??? ??????
????????? ?? ?????? ?????? ?????? ???, ?????? ??? ?????? ?????? ?????? ??? ??????
????? ?????? ?? ?????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ??????
??? ??? ?????? ??? ?????? ??? ?????????? ???, ?? ??????, ?????? ??? ?????? ???
?????????, ??? ?????? ??? ?????? ??? ?????? ?? ?????? ?????? ?????? ?????????? ??? ???
?? ???' ?????? ??? ?????? ??? ??????, ? ?????? ??? ?????? ?????? ??? ?????? ???
????????? ??? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

22 ??? ?????????? ?? ?????? ??????? ??? ?????? ???, ?????? ?? ?????????? ???, ???
?? ?????? 9, ?????????? 1, ?????? ??????, ??? ?????? ???, ?? «????????? ??? ???»
?????? ?????????? ???, ??? ?????? ?????? ??? ?? ?????? ?????? ???, ?? ?????????? ???,
????????? ?????????? ???, ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????????? ???.

23 ???, ??? ?????? ???????, ?? ?????? 9 ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? (????????? ??? 21?? ?????? 2005, HE, C?25/03,
EU:C:2005:241, ??? 40, ??? 13?? 2018, Polfarmex, C?421/17,
EU:C:2018:432, ??? 39 ??? ?????? ?????????? ???). ??? ??????????
????????????, ??? ??????, ?? «?????????», ??? ??? ?????? ??? ?? ??? ?????? 9, ???
????????? ??? ?????? ?????? ??? ?????????? ??? ?????? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? (?????? ??? 13?? 2018, Polfarmex, C?421/17,
EU:C:2018:432, ??? 38 ??? ?????? ?????????? ???). ??????, ?????????? ??
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ???, ?????? ??
????????? ??? ?? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???, ??? ???
????????? ??? ?? ??? ?????? ??? ?????? ??? (?????? ??? 12?? 2016, Nigl ???.,
C?340/15, EU:C:2016:764, ??? 28 ??? ?????? ?????????? ???). ??????, ? ??????
??? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?? ??? ?????? 9 (????. ?????? ??? 21?? ?????? 2005, HE, C?25/03,
EU:C:2005:241, ??? 41).

24 ??? ?? ?????????? ??? ?????????? ??? ????? ?????????? ??? ????? ?????????? ??? ??
?????? ??? ????? ?????? ?????????? ?????????? ??? ?????? ?????????? ?????????? ??? ???
?????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ???
?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 9,
????????? 1, ??? ?????? ???, ??? ? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
?????????, ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ??? ??????, ?????????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??
????? ??? ?????? ??? ?????????? ???.

25 ???????, ?????? ?? ?????????? ?????? ?????? ?? ?????? ??? ?? ???????
????????????? ?????? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ??????????
?????? ???????, ?? ?????? ??? ?????? ?????? ??? ?????????? ??? ?????????? ???, ?????????????? ???
????????? ??????. ?????????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ??????
????? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????????
??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????.

26 ?? ?????????? ??? ?????????? ??? ?????? 24 ??? ?????? ?????? ??? ?????????? ??? ??????????
??? ?? ?????? 295 ??? 296 ??? ?????? ???, ?? ?????? ?????????? ?????? ??? ?????????? ???
????????? ?????? ??? ?????? ???' ?????? ??? ?????? ??? ?????? ??? ??????.

27 ???????, ?????? ?? ?????????? ???, ??? ?? ?????? 295, ?????????? 1, ??? ??????
????? ?????? ?????? ??? ?????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????????
?????, ?? ?????? 296 ??? ?? ?????? ?????? ?????? ???, ??? ?????? ??? 1, ??? ?? ?????? ???
?????? ?? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ??????
????????? ??? ?? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
??? ?????????? ??? ?????? ???' ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ??????
2, ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?? ???' ?????? ??? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ??????
??? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

28 ???????, ??? ?? ?????? ?????????? ??? ?????? ?? ?????? ??? ?????? ??? ?? ???????
?????? ?? ??????????, ??? ?????????? ?????????? ??? ?????????? ??? ?????? ??? ??????
????????? ??????????, ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??
????????? ??? ??? ??? ??? ??? ??? ??? ??? ??? ??? ??? ??? ??? ??? ?????? ??? ?????????? ???
????? ??? ?????????? ??? ??? ?????? ???/??? ?????????? ??? ?????? ??? ?????? ??? ??? ???.

29 ?? ?? ??????, ??? ?????, ???????, ??????? ?? ??? ?????? ??? ? ??????? ?????? ???
?????? ? ?????? ?????????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??????????
??? ?????? ??? ?????? ??????????????, ?????????????? ??? ?????? ??? ?????? ??? ??????
????????? ??????, ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

30 ??? ??????, ? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
??? ? ??? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? . ??????, ??? ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ???, ?????????? ???
????????? ??? ? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??
????????? ??? ? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

31 ?? ?????? ?????????? ?????????? ??? ? ?????? ??? ?????? ??? ?????? ??? ??????

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?? ??? ??????? ?? ?? ???' ?????????? ?????????? ??? ???????, ??? ? ??????? ????, ??? ??

????????? ?????????? ??? ???, ?????????? ?????????? ??? ?????? ??? ??? ??????.

32 ???????, ?????????????? ??? ? ?????????????? ??? ??????????????, ??? ??????????????
??? ??? ?????????? ?????????????? ?????? ??? ?????? ?????????????? ??? ?????? ?
?????? ??? [?????? ??? 4?? ??????? 2020, C.F. (????????????? ???????), C?430/19,
EU:C:2020:429, ??? 42 ??? ??? ?????????????? ??????????]. ??????????, ? ??????? ???
????? ??? ???????, ???????, ?? ?????????? ??????? ??? ?? ??? ??????? ??? ??????? ??
?????????? ??? ??????? ??????? ???, ??? ?? ??? ?????????? ??? ??????? ??? ??????? ??? ??
????? ??? ??????? ??????? ??? ??????? ??? ??????? ??? ??????? ??? ?????' ???????
??????????, ???????????, ?? ?????, ?? ?????? ??????? ??????? ?? ?????? ??? ?????? ??????? ??
?????? ??????? ??? ??? ?????? ??? ??????? ??? ??????? ??? ??????? ??? ?????? (??., ???'
??????????, ?????????? ??? 11?? ??????? 2020, SCT, C?146/19, EU:C:2020:464, ??? 39 ???
???? ??????????? ???????, ??? ??? 15?? ??????? 2021, Finanzamt für Körperschaften
Berlin, C?868/19, ?? ???????????, EU:C:2021:285, ??? 63).

33 ????????????, ??? ?????????? ????? ?????? ??? ?????? ??????, ?????????? ?????
?????? ?????????? ??? ?? ??????? ??, ?????????? ?????? ??? ?????????? ??? ??????????
??????????, ? ?? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ????'
????????? ?????????? ??? ?????? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ?
?????? ?? ?????????? ?? ?????????? ??? ??? ??????????, ?? ?????? ??? ??????,
????????? ?????????? ??? ?? ??????????, ?????? ???, ??? ?????? ?? ?????? ??? ?????? ???
????????????? ??? ??? ?????? ??????.

34 ??????? ?? ??????????, ??? ??????????? ?? ?????? 27 ??? ??????? ????????, ??? ??
????? 296 ??? ??????? ?? ??????????, ??? ?????????? 1, ??? ?? ?????? ??? «?????? ??
?????????» ??? ??? ??????? ?? ?????? ? ??????? ??? ?????????? ??????? ??? ??
????????? ?? ?????????? ?? ???' ??????? ??????? ??? ???????????, ??? ??????????
2, ??? ??? ?????? «?????? ?? ??????» ??? ?? ???' ??????? ???????, ??????
?????, ??? ??????? ?? ??? ?????? ? ??????? ??? ??????? ?????????? ??????? ??? ??
????????? ?????????? ?????????? ??????.

35 ?????? ??????, ?? ??????????? ????? ?????? ??? ????' ?????????? ??????? ??
?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??? ?? ??????
????????? ?? ???? ?? ???? ??????, ?? ?? ??????, ?? ??????????? ????? ?? ???? ?? ??????
?? ????? ??????? ?? ?????? ?????? ??? ?????????? ??????. ?????? ?? ?? ?????? ??
?? ????? ?????????? ?????????????? ??? ???? ?????????????? ??? ?????? ?????? ???????????, ?
?????? ?????? ?? ?????????????? ?? ??? ?????? ??? ?????????????? ??? ?????? ?????? ?????? ??
?????? ??? ?????????? ?? ?????????? (?????? ?? 12?? ?????????? 2016, Nigl ??.,
C?340/15, EU:C:2016:764, ?????? 37 ?? 38 ??? ????? ??????????? ??????????).

36 ?? ?? ???????, ?? ?? ???? ?????? ?????????????????? ?????????????? ??? ? ?????????? ???
?????? ?? ?? ?????????? ?? ?? ? ?? ?????? ?? ?? ?????? ?????? ?????????? ?????????? ?????????? ???
????????? ?? ?? ??? ?? ?? ?????? ?????????????? ?? ?? ? ?? ?????? ??? ?????? ??? ?????? ???
????? ?????????? ??????????, ?? ?? ?????? ?????????? ?? ?? ?????? ??? ?????? ??? ?????? ???
????????? ?? ?? ??? ?? ?? ?????? ?????? ??? ?????? ??????, ?? ?? ?????????? ??????????
????????? ?? ?? ??? ?? ?? ?????? ?? ?? ?????? ?????? ?????? ?? ?? ?????? ??? ?????? ???
????????? ?? ?? ??? ?? ?? ?????? ?? ?? ?????? ?????? ?????? ?? ?? ?????? ??? ?????? ???
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????????? ?? ?? ?????????? ?? ?? ? ?? ?????? ?????? ?? ?? ?????? ??? ?? ?? ???' ??????
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37 ?????????????? ?????? ??? ??????? ??? ??????????????, ??? ?????????????? ??????????
?????? ?? ??? ?? ?????? ? ???????? ??? ?? ?????? 9, 295 ??? 296 ??? ??????? ??? ?????? ??? ??????
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- ?????????????? ??? ??????? ??????? ?????? ? ?????? ?????????? ?? ?????????????? ???
?????? ??? ?????? ??????? ?????????????? ??? ??????? ??? ?????? ??????????????, ?? ???????????
????????????????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ??????????, ?? ?????????? ??
????????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ?? ??? ?? ???
????????? ??? ?????? ?????????? ?????? ??? ?????????? ?????? ??? ?????? ?????? ?????? ?? ??? ??
- ??? ????????????, ??? ?????????? ??? ?????? ??? ??????? ?? ??????? ??????? ??????? ??
????????????? ??? ?? ???' ??????? ?????????? ??? ???????, ? ??????? ??? ??? ??? ??????????? ??
????????? ?? ?????????????? ??? ??? ?????????? ?????????? ??? ?? ??? ?? ?????????? ??? ??
?????? ??? ?????? ??????? ??????? ??? ?????????? ??? ?????????? ??? ?? ??? ?? ?????????? ??? ??
??????????, ???, ?????? ??????? ??? ?????????? ??? ?????????????? ???????????, ?? ?????????? ???
?????????? ??? ??? ?????????? ?????????? ?????????? ??? ?????????? ??? ?? ??? ?????????? ???
?????????? ??? ??? ??????????, ?? ?????? ??? ???????, ?????????? ??? ?????????? ?????????? ???
?????????, ? ??? ? ?? ?????? ??? ??????? ?????????? ?????????? ??? ?????????? ?? ?????????????? ???
????? ?????? ?????????? ??? ??? ?????????? ??? ?????????? ?????????? ?????? ?? ??? ?? ?????????? ??
?? ?????? ??? ?????????? ?????????? ?????????? ?????? ?? ??? ?? ??? ?????????? ?? ??? ?? ?????? ??
????????? ??? ?????? ??? ?????????? ?????????? ?????????? ??? ?????? ?? ??? ?? ?????????? ??
????????? ?????? ??? ?????????? ?????????? ?????????? ??? ?????? ?? ??? ?? ?????????? ???

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38 ?????????? ??? ? ?????????? ???, ?? ???? ???? ?????????? ??? ?????? ????, ???
????????? ?????????????? ??? ?????? ??? ?????????? ??? ??????? ??? ?????????? ???????????, ?' ???
????????????? ?? ?????????? ??? ?? ?????????? ?????????? ??????. ?? ?????? ??? ?????? ??????????
????? ?????????? ?????????? ??? ??????????, ??? ?????? ?? ??? ?????????, ??? ??????????.

??? ??? ?????? ??????, ?? ?????????? (????? ??????) ????????????:

??" ?????? 9, 295 ??? 296 ??? ?????? 2006/112/?? ??? ??????????, ??? 28?? ??????????
2006, ??????? ?? ?? ?????? ?????? ?????? ??? ?????????????? ????, ?????? ??? ??????
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- ?????????? ??? ??????? ?????? ?????? ? ?????? ? ?????? ?????????? ?? ??????????
?? ?????? ??? ?????? ??????? ?????????????? ??? ?????????? ??? ??????? ?? ??? ??????
????????????? ?, ?????????????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ??????????,
?? ?????????? ?? ??????? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ??????
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- ??? ????????????, ??? ?????????? ??? ?????? ??? ??????? ?? ??????? ??????? ??????????
????????????? ??? ?? ???' ??????? ?????????? ??? ???????, ? ??????? ??? ?? ??? ??????
????????? ?? ?????????? ?? ?????????????? ??? ?????? ??? ?????????? ?????????? ??? ?? ??? ??
????????? ??? ?? ?????? ??? ?????? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ??????
?? ???' ?????????? ??????????, ???, ?????? ?????? ?????????? ??? ?????? ?????????? ??????????
??????????, ?? ?????????? ??? ?????? ?????? ?????????? ??? ?????? ?????????? ?????????? ??
?????????? ? ?????? ?? ?????????? ??? ?????? ?????? ?????????? ??? ?????? ?????????? ??
??? ???????, ?????????? ?????????? ?????? ??????????, ? ?????? ?? ?????? ??? ??????? ??
????????? ?????? ??? ?????? ?????????? ??? ?????? ?????? ?????????? ??? ?????? ?????????? ??
????????? ??? ?????? ?????????? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??????????
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